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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ ITA 1479/2010

THE COMMISSIONER OF INCOME TAX ..... Appellant  
Through: Mr. Sanjeev Sabharwal, Advocate

versus

M. S. BINDRA & SONS P. LTD. .... Respondent  
Through: None.

% Date of Decision: 28<sup>th</sup> September, 2010**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE MANMOHAN**

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

**MANMOHAN, J**

1. The present appeal has been filed under Section 260A of Income Tax Act, 1961 (for brevity "Act") challenging the order dated 20<sup>th</sup> July, 2009 passed by the Income Tax Appellate Tribunal (in short "Tribunal") in ITA No. 504/Del/2009, for the Assessment Year 2001-2002.

2. Mr. Sanjeev Sabharwal, learned counsel for the revenue submitted that the Tribunal had erred in law in dismissing the revenue's appeal whereby the penalty under Section 271(1)(c) of the Act amounting to ₹ 45,40,297/- imposed by the Assessing Officer (in short, "AO") had been deleted. Mr. Sabharwal further relied upon a judgment



of the Supreme Court in *Union of India and Ors. Vs. Dharamen Textile Processors and Ors. (2008) 13 SCC 369.*

3. In fact, Section 271(1)(c) came to be interpreted by the Apex Court in *Union of India & Ors. vs. Dharamendra Textile Processors & Ors. (2008) 306 ITR 277 (SC)*. The three Judge Bench of the Apex Court over-ruled the decision in *Dilip N. Shroff vs. Joint CIT (2007) 291 ITR 519 (SC)* and approved the decision in *Chairman, SEBI vs. Shriram Mutual Fund and Anr. (2006) 5SCC 361*. In the said case, the Supreme Court held:-

*“27. The Explanations appended to section 272(1)(c) of the Income-tax Act entirely indicate the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing the return. The judgment in Dilip N. Shroff’s case [2007] 8 Scale 304 (SC) has not considered the effect and relevance of Section 276C of the Income-tax Act. The object behind the enactment of section 271(1)(c) read with the Explanations indicates that the said section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability as is the case in the matter of prosecution under Section 276C of the Income-tax Act.”*

4. The aforesaid decision was taken note of in *Commissioner of Income Tax vs. Reliance Petroproducts Pvt. Ltd.(2010) 322 ITR 158 (SC)*. While considering the phrase ‘concealment of particulars’, the Apex Court referred to Section 271 and held as follows:-

*“9. Therefore, it is obvious that it must be shown that the conditions under Section 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the return filed because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. In Dilip N. Shroff v.*



*Joint CIT [2007] 6 SCC 329, this Court explained the terms “concealment of income” and “furnishing inaccurate particulars”. The Court went on to hold therein that in order to attract the penalty under Section 271(1)(c), mens rea was necessary, as according to the Court, the word “inaccurate” signified a deliberate act or omission on behalf of the assessee. It went on to hold that clause (iii) of section 271(1)(c) provided for a discretionary jurisdiction upon the assessing authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term “inaccurate particulars” was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars. It was further held that the Assessing Officer must be found to have failed to prove that his explanation is not only not bona fide but all the facts relating to the same and material to the computation of his income were not disclosed by him. It was then held that the explanation must be preceded by a finding as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of mens rea was essential. It was only on the point of mens rea that the judgment in Dilip N. Shroff v. Joint CIT was upset. In Union of India v. Dharamendra Textile Processors, after quoting from section 271 extensively and also considering section 271(1)(c), the Court came to the conclusion that since Section 271(1)(c) indicated the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing return, there was no necessity of mens rea. The court went on to hold that the objective behind the enactment of Section 271(1)(c) read with Explanations indicated with the said section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, willful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under Section 276C of the Act. The basic reason why decision in Dilip N. Shroff v. Joint CIT was overruled by this Court in Union of India v. Dharamendra Textile Processors, was that according to this Court the effect and difference between Section 271(1)(c) and Section 76C of the Act was lost sight of in the case of Dilip N. Shroff v. Joint CIT. However, it must be pointed out that in Union of India v. Dharamendra Textile Processors, no fault was found with the reasoning in the decision in Dilip N. Shroff v. Joint CIT, where the court*



*explained the meaning of the terms “conceal” and “inaccurate”. It was only the ultimate inference in Dilip N. Shroff v. Joint CIT to the effect that mens rea was an essential ingredient for the penalty under Section 271(1)(c) that the decision in Dilip N. Shroff v. Joint CIT was overruled.....”*

Thereafter, so stating their Lordships’ proceeded to hold as follows:-

*“11. ....A mere making of the claim, which is not sustainable in law, by itself, will not amount for furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars.”*

5. In the present case, we find that both the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] and the Tribunal have given cogent reasons for setting aside the penalty levied under Section 271(1)(c) of the Act. The relevant portion of the impugned order of the Tribunal is reproduced hereinbelow:-

*“6. None appeared on behalf of the assessee. We, therefore, heard the learned DR and gone through the records. In view of the categorical finding of the CIT (Appeals) that the issue is contentious in nature and is debatable, therefore, it would not be a case of concealment of penalty. Otherwise also, the assessee having disclosed all the facts in the return of income filed with the department and having offered the amount under Section 41(1) in assessment year 2002-03 shows the bonafides of the assessee and, therefore, in this account also, it cannot be a ground for concealment to income or furnishing of inaccurate particulars thereof. It was held by the Tribunal in the case of Shobha Trading Company (P) Limited Vs. ITO (1995) 52 ITD 188 (Del.) that penalty for concealment cannot be levied merely because certain deductions, relief or benefits have been denied to the assessee. Accordingly, we do not find any reason to interfere with the order of the CIT (Appeals) and the same is upheld.”*



6. From the aforesaid, it is apparent that the respondent-assessee had made full disclosure and there was neither any concealment of income nor furnishing of inaccurate particulars. In fact, both the CIT(A) and Tribunal have found that the justification furnished by the respondent-assessee was bonafide. Consequently, keeping in view the conclusion of facts arrived at by the Commissioner as well as by the Tribunal, the explanation offered by the respondent-assessee is bonafide and the respondent-assessee's case would fall within the ambit of Explanation 1 to Section 271 of Act.

7. Accordingly, the respondent-assessee is not liable to pay penalty under Section 271(1)(c) of Act and thus the present appeal being devoid of merits is dismissed *in limine* but with no order as to costs.

**MANMOHAN, J**

**CHIEF JUSTICE**

**SEPTEMBER 28, 2010**

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